



2005 ASSEMBLY BILL 999

February 7, 2006 – Introduced by Representatives GUNDERSON, FREESE, STASKUNAS, ALBERS, FIELDS, HINES, JESKEWITZ, MUSSER, NISCHKE, OTT, OWENS, PETROWSKI, TOWNSEND, VOS and ZEPNICK, cosponsored by Senators ROESSLER, KEDZIE, COWLES, SCHULTZ, DARLING, GROTHMAN, HARSDFORF and WIRCH. Referred to Committee on Natural Resources.

1 **AN ACT** *to repeal* 292.15 (2) (at), 292.15 (2) (d), 292.15 (6) (b), 292.31 (1) (a) 2.,
2 292.31 (1) (c), 292.31 (3) (cm) and 292.31 (5); *to renumber* 292.15 (6) (a); *to*
3 *renumber and amend* 66.1106 (13); *to amend* 66.1106 (1) (c), 66.1106 (1) (e),
4 66.1106 (1) (f), 66.1106 (1) (g), 66.1106 (1) (i), 66.1106 (1) (k), 66.1106 (2) (a),
5 66.1106 (4) (intro.), 66.1106 (4) (b), 66.1106 (7) (a), 66.1106 (7) (d) 1., 66.1106 (9),
6 66.1106 (10) (title), 66.1106 (10) (a), 66.1106 (10) (b), 66.1106 (13) (title), 74.23
7 (1) (b), 74.25 (1) (b) 1., 74.25 (1) (b) 2., 74.30 (1) (i), 74.30 (1) (j), 74.30 (2) (b),
8 79.095 (1) (c), 79.095 (2) (b), 227.01 (13) (zc), 234.01 (4n) (a) 3m. a., 292.15 (2)
9 (c), 292.15 (2) (e), 292.15 (3), 292.21 (1) (c) 2. g., 292.31 (1) (title), 292.31 (1) (a)
10 3., 292.31 (1) (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2) (a), 292.31 (3)
11 (c), 292.31 (3) (d), 292.31 (4), 292.57 (title) and 292.57 (2) (a); *to repeal and*
12 *recreate* 292.31 (1) (a) (title) and 292.31 (1) (a) 1.; and *to create* 66.1106 (1)
13 (fm), 66.1106 (1) (je), 66.1106 (1m), 66.1106 (10) (c), 66.1106 (10) (d), 66.1106 (10)
14 (e), 66.1106 (11), 66.1106 (12), 66.1106 (13) (b), 292.12, 292.15 (2) (ae) 7., 292.15

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1 (2) (b) 5., 292.15 (7) (d), 292.15 (7) (e) and 292.23 of the statutes; **relating to:**
2 identification and cleanup of properties that are environmentally
3 contaminated; properties with residual contamination; modifying the
4 environmental remediation tax incremental financing program; exempting
5 local governmental units from solid waste management standards with respect
6 to certain properties; the liability of certain persons for environmental
7 contamination on property on which a cleanup has been conducted; and
8 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Property with residual contamination after a cleanup

Current law generally requires a person who possess or controls a hazardous substance that is discharged into the environment, including the person who owns the property on which the discharge occurred, or who causes a discharge to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. The Department of Natural Resources (DNR) usually has jurisdiction over the cleanup of hazardous substance discharges. The Department of Commerce has jurisdiction over the cleanup of some petroleum product discharges and the Department of Agriculture, Trade and Consumer Protection (DATCP) has jurisdiction over the cleanup of some discharges of agricultural chemicals.

This bill authorizes the agency with administrative authority over the site of a discharge of a hazardous substance (DNR, the Department of Commerce, or DATCP, depending on the type of site) to impose requirements as a condition of approving a cleanup if residual contamination remains on the site. The agency may do any of the following:

1. Require maintenance of an engineering control, such as a soil cover, that is needed to prevent or minimize the spread of the contamination.

2. Require an investigation and the performance of any needed cleanup if a building is removed that prevented a complete investigation or cleanup of contamination on the site.

3. Impose limitations or other conditions related to property to ensure the continued protection of public health, safety, and welfare and the environment and to promote economic development.

The bill requires DNR to maintain a database of sites for which a cleanup has been approved but that have residual contamination. DNR must list each of those sites in the database and must include any requirements imposed by the agency with

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jurisdiction over a site. A person requesting approval of a cleanup must pay a fee to have the site listed in the database.

The bill also requires a person who applies for approval of a cleanup that leaves residual contamination on property that is not owned by the person to notify the owner of the property about the residual contamination.

A person who violates the requirements imposed under this bill is subject to a civil forfeiture of \$10 to \$5,000 for each day of violation.

Environmental remediation tax incremental financing

This bill modifies the environmental remediation tax incremental financing program. Under current law, the environmental remediation tax incremental financing program permits a city, village, town, or county (political subdivision) to defray the costs of remediating contaminated property that is owned by the political subdivision. The mechanism for financing costs that are eligible for remediation is very similar to the mechanism under the tax incremental financing (TIF) program. If the remediated property is transferred to another person and is then subject to property taxation, environmental remediation tax incremental financing may be used to allocate some of the property taxes that are levied on the property to the political subdivision to pay for the costs of remediation.

A political subdivision that has incurred "eligible costs" to remediate environmental pollution on a parcel of property may apply to the Department of Revenue (DOR) to certify the "environmental remediation tax incremental base" of the parcel. DOR is required to certify the environmental remediation tax incremental base if the political subdivision submits to DOR all of the following: 1) a statement that the political subdivision has incurred some eligible costs, together with a detailed proposed remedial action plan approved by DNR that contains cost estimates for anticipated eligible costs, a schedule for the design and implementation that is needed to complete the remediation, and certification from DNR that it has approved the site investigation report that relates to the parcel; 2) a statement that all taxing jurisdictions with authority to levy general property taxes on the parcel of property have been notified that the political subdivision intends to recover its environmental remediation costs by using an "environmental remediation tax increment"; and 3) a statement that the political subdivision has attempted to recover its environmental remediation costs from the person who is responsible for the environmental pollution that is being remediated.

This bill makes technical changes to the environmental remediation tax incremental financing program. These changes include the following:

1. Creating a definition of "environmental remediation tax incremental district" (ERTID) that is somewhat similar to the definition of "tax incremental district" under the TIF program and creating a definition of "project expenditures", which means "eligible costs" and other costs incurred by a political subdivision in creating an operating an ERTID.

2. Making changes to the definitions of "environmental remediation tax increment," "environmental remediation tax incremental base," "period of certification," and "taxable property." The bill increases the period of certification, and an ERTID's maximum life, from 16 to 23 years.

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3. Adding to the definition of “eligible costs” the cancellation of unrecovered delinquent property taxes.

4. Creating procedures for the termination of an ERTID that are similar to the termination procedures for a tax incremental district under the TIF program.

5. Prohibiting DOR from certifying the environmental remediation tax incremental base of an ERTID if a political subdivision does not send DOR certain required forms within 180 days of the ERTID’s termination.

6. Requiring that the final report under the program include an independent certified financial audit.

7. Requiring that DOR be provided with a final accounting of the ERTID’s project expenditures and the final amount of eligible costs that have been paid for an ERTID.

8. Modifying certain provisions of the program to apply to contiguous parcels of property or land, as well as a parcel of property or land.

9. Authorizing DOR to charge a \$1,000 fee to determine or redetermine the tax incremental base of an ERTID.

Also under the bill, if a city or village annexes property from a town that is using an ERTID to remediate environmental pollution on all or part of the territory that is annexed, the city or village must pay to the town that portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, must negotiate an agreement on the amount that must be paid.

The ERTID provisions in the bill take effect on October 1, 2006, and first apply to an ERTID that is in existence or that is created on that date.

Local governmental exemption from solid waste management standards

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Current law generally exempts a local governmental unit from these clean-up requirements with respect to hazardous substance discharges on property acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill provides that a local governmental unit is exempt from solid waste management standards and other legal requirements relating to solid waste for a property that was acquired in a way that would qualify for the exemption from clean-up requirements, with a number of exceptions and conditions. The exemption from solid waste requirements does not apply to a solid waste facility that was operated by the local governmental unit or owned by the local governmental unit while it was operated or to landfills that were once licensed by DNR. The bill requires a local governmental unit to obtain permission from DNR for any construction on the property and requires the local governmental unit to maintain any health or safety system on the property, such as a system to collect landfill gas, that DNR required before the local governmental unit acquired the property.

Voluntary party liability exemption

Under current law, a person, called a voluntary party, who applies for a liability exemption is exempt from absolute requirements to restore the environment and

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minimize the harmful effects of a discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge, and the voluntary party maintains and monitors the property as required by DNR. Also, under current law, the voluntary party liability exemption is available even if the cleanup does not get rid of a substance in groundwater as long as DNR determines that the substance will naturally break down (attenuate) and, if required by DNR, the voluntary party obtains insurance to cover the costs of cleanup in case natural attenuation fails.

Under current law, the voluntary party liability exemption is not available for most sites at which solid waste was disposed of. This bill narrows that exemption so that only solid waste facilities that were once licensed by DNR are excluded from the exemption.

In addition this bill provides that, to qualify for the liability exemption for property on which DNR determines that natural attenuation will successfully complete the cleanup, a voluntary party who owns the property must provide access to the property for the purpose of determining whether natural attenuation has failed and, if so, to allow someone else to clean up the property.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.1106 (1) (c) of the statutes is amended to read:
2 66.1106 (1) (c) “Eligible costs” means capital costs, financing costs, and
3 administrative and professional service costs, incurred or estimated to be incurred
4 by a political subdivision, for the investigation, removal, containment, or monitoring
5 of, or the restoration of soil, air, surface water, sediments, or groundwater affected
6 by, environmental pollution, including monitoring costs ~~incurred within 2 years after~~
7 ~~the date on which the department of natural resources certifies that environmental~~
8 ~~pollution on the property has been remediated, cancellation of delinquent taxes if the~~
9 ~~political subdivision demonstrates that it has not already recovered such costs by~~
10 any other means, property acquisition costs, demolition costs including asbestos
11 removal, and removing and disposing of underground storage tanks or abandoned

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1 containers, as defined in s. 292.41 (1), ~~except that for.~~ For any parcel of land “eligible
2 costs” shall be reduced by any amounts received from persons responsible for the
3 discharge, as defined in s. 292.01 (3), of a hazardous substance on the property to pay
4 for the costs of remediating environmental pollution on the property, by any amounts
5 received, or reasonably expected by the political subdivision to be received, from a
6 local, state, or federal program for the remediation of contamination in the district
7 that do not require reimbursement or repayment, and by the amount of net gain from
8 the sale of the property by the political subdivision. “Eligible costs” associated with
9 groundwater affected by environmental pollution include investigation and
10 remediation costs for groundwater that is located in, and extends beyond, the
11 property that is being remediated.

12 **SECTION 2.** 66.1106 (1) (e) of the statutes is amended to read:

13 66.1106 (1) (e) “Environmental remediation tax increment” means that
14 amount obtained by multiplying the total city, county, school, and other local general
15 property taxes levied on a parcel of real property that is certified under this section
16 taxable property in a year by a fraction having as a numerator the environmental
17 remediation value increment for that year ~~for that parcel~~ in such district and as a
18 denominator that year’s equalized value of that parcel taxable property. In any year,
19 an environmental remediation tax increment is “positive” if the environmental
20 remediation value increment is positive; it is “negative” if the environmental
21 remediation value increment is negative.

22 **SECTION 3.** 66.1106 (1) (f) of the statutes is amended to read:

23 66.1106 (1) (f) “Environmental remediation tax incremental base” means the
24 aggregate value, as equalized by the department, of a parcel of real taxable property
25 that is certified under this section as of the January 1 preceding the date on which

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1 the department of natural resources issues a certificate certifying that
2 environmental pollution on the property has been remediated in accordance with
3 rules promulgated by the department of natural resources environmental
4 remediation tax incremental district is created, as determined under sub. (1m) (b).

5 **SECTION 4.** 66.1106 (1) (fm) of the statutes is created to read:

6 66.1106 (1) (fm) “Environmental remediation tax incremental district” means
7 a contiguous geographic area within a political subdivision defined and created by
8 resolution of the governing body of the political subdivision consisting solely of whole
9 units of property as are assessed for general property tax purposes, other than
10 railroad rights-of-way, rivers, or highways. Railroad rights-of-way, rivers, or
11 highways may be included in an environmental remediation tax incremental district
12 only if they are continuously bounded on either side, or on both sides, by whole units
13 of property as are assessed for general property tax purposes which are in the
14 environmental remediation tax incremental district. “Environmental remediation
15 tax incremental district” does not include any area identified as a wetland on a map
16 under s. 23.32.

17 **SECTION 5.** 66.1106 (1) (g) of the statutes is amended to read:

18 66.1106 (1) (g) “Environmental remediation value increment” means the
19 equalized value of a ~~parcel of real~~ taxable property that is certified under this section
20 minus the environmental remediation tax incremental base. In any year, the
21 environmental remediation value increment is “positive” if the environmental
22 remediation tax incremental base of the ~~parcel of~~ taxable property is less than the
23 aggregate value of the ~~parcel of~~ taxable property as equalized by the department; it
24 is “negative” if that base exceeds that aggregate value.

25 **SECTION 6.** 66.1106 (1) (i) of the statutes is amended to read:

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1 66.1106 (1) (i) “Period of certification” means a period of not more than ~~16~~ 23
2 years beginning after the department certifies the environmental remediation tax
3 incremental base of a parcel of property under sub. (4) or a period before all eligible
4 costs have been paid, whichever occurs first.

5 **SECTION 7.** 66.1106 (1) (je) of the statutes is created to read:

6 66.1106 (1) (je) “Project expenditures” means eligible costs and other costs
7 incurred by a political subdivision to create and operate an environmental
8 remediation tax incremental district.

9 **SECTION 8.** 66.1106 (1) (k) of the statutes is amended to read:

10 66.1106 (1) (k) “Taxable property” means all real and personal taxable property
11 located in an environmental remediation tax incremental district.

12 **SECTION 9.** 66.1106 (1m) of the statutes is created to read:

13 66.1106 (1m) CREATION OF ENVIRONMENTAL REMEDIATION TAX INCREMENTAL
14 DISTRICTS. In order to implement the provisions of this section, the governing body
15 of the political subdivision shall adopt a resolution which does all of the following:

16 (a) Describes the boundaries of an environmental remediation tax incremental
17 district with sufficient definiteness to identify with ordinary and reasonable
18 certainty the territory included within the district.

19 (b) Creates the district as of January 1 of the same calendar year for a
20 resolution adopted before October 1 or as of January 1 of the next subsequent
21 calendar year for a resolution adopted after September 30.

22 **SECTION 10.** 66.1106 (2) (a) of the statutes is amended to read:

23 66.1106 (2) (a) A political subdivision that develops, and whose governing body
24 approves, a written proposal to remediate environmental pollution may use an
25 environmental remediation tax increment to pay the eligible costs of remediating

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1 environmental pollution on contiguous parcels of property that are located in an
2 environmental remediation tax incremental district within the political subdivision
3 and that are not part of a tax incremental district created under s. 66.1105, as
4 provided in this section, except that a political subdivision may use an
5 environmental remediation tax increment to pay the cost of remediating
6 environmental pollution of groundwater without regard to whether the property
7 above the groundwater is owned by the political subdivision. No political subdivision
8 may submit an application to the department under sub. (4) until the joint review
9 board approves the political subdivision's written proposal under sub. (3).

10 **SECTION 11.** 66.1106 (4) (intro.) of the statutes is amended to read:

11 66.1106 (4) CERTIFICATION. (intro.) Upon written application to the department
12 of revenue by the clerk of a political subdivision on or before ~~April 1 of the year~~
13 ~~following the year in which the certification described in par. (a) is received from the~~
14 ~~department of natural resources~~ December 31 of the same calendar year for an
15 environmental remediation tax incremental district created before October, as
16 determined under sub. (1m) (b), or December 31 of the subsequent calendar year for
17 an environmental remediation tax incremental district created after September 30,
18 the department of revenue shall certify to the clerk of the political subdivision the
19 environmental remediation tax incremental base ~~of a parcel of real property~~ if all of
20 the following apply:

21 **SECTION 12.** 66.1106 (4) (b) of the statutes is amended to read:

22 66.1106 (4) (b) The political subdivision submits a statement that all taxing
23 jurisdictions with the authority to levy general property taxes on the parcel or
24 contiguous parcels of property have been notified that the political subdivision

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1 intends to recover the costs of remediating environmental pollution on the property
2 and have been provided a statement of the estimated costs to be recovered.

3 **SECTION 13.** 66.1106 (7) (a) of the statutes is amended to read:

4 66.1106 (7) (a) Subject to pars. (b), (c) and (d), the department shall annually
5 authorize the positive environmental remediation tax increment with respect to a
6 parcel or contiguous parcels of property during the period of certification to the
7 political subdivision that incurred the costs to remediate environmental pollution on
8 the property, except that an authorization granted under this paragraph does not
9 apply after the department receives the notice described under sub. (10) (b).

10 **SECTION 14.** 66.1106 (7) (d) 1. of the statutes is amended to read:

11 66.1106 (7) (d) 1. The department may not authorize a positive environmental
12 remediation tax increment under par. (a) to pay otherwise eligible costs that are
13 incurred by the political subdivision after the department of natural resources
14 certifies to the department of revenue that environmental pollution on the parcel or
15 contiguous parcels of property has been remediated unless the costs are associated
16 with activities, as determined by the department of natural resources, that are
17 necessary to close the site described in the site investigation report.

18 **SECTION 15.** 66.1106 (9) of the statutes is amended to read:

19 66.1106 (9) **SEPARATE ACCOUNTING REQUIRED.** An environmental remediation tax
20 increment received with respect to a parcel or contiguous parcels of land that is
21 subject to this section shall be deposited in a separate fund by the treasurer of the
22 political subdivision. No money may be paid out of the fund except to pay eligible
23 costs for a parcel or contiguous parcels of land, or to reimburse the political
24 subdivision for such costs ~~or to satisfy claims of holders of bonds or notes issued to~~
25 ~~pay eligible costs.~~ If an environmental remediation tax increment that has been

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1 collected with respect to a parcel of land remains in the fund after the period of
2 certification has expired, it shall be paid to the treasurers of the taxing jurisdictions
3 in which the parcel is located in proportion to the relative share of those taxing
4 jurisdictions in the most recent levy of general property taxes on the parcel.

5 **SECTION 16.** 66.1106 (10) (title) of the statutes is amended to read:

6 66.1106 (10) (title) REPORTING REQUIREMENTS; NOTICE OF DISTRICT TERMINATION.

7 **SECTION 17.** 66.1106 (10) (a) of the statutes is amended to read:

8 66.1106 (10) (a) Prepare and make available to the public updated annual
9 reports describing the status of all projects to remediate environmental pollution
10 funded under this section, including revenues and expenditures. A copy of the report
11 shall be sent to all taxing jurisdictions with authority to levy general property taxes
12 on the parcel or contiguous parcels of property by May 1 annually.

13 **SECTION 18.** 66.1106 (10) (b) of the statutes is amended to read:

14 66.1106 (10) (b) Notify the department within 10 days after the period of
15 certification for a parcel or contiguous parcels of property has expired.

16 **SECTION 19.** 66.1106 (10) (c) of the statutes is created to read:

17 66.1106 (10) (c) With regard to an environmental remediation tax incremental
18 district, not later than 12 months after the last expenditure is made or not later than
19 12 months after an expenditure may be made under sub. (2) (b), whichever comes
20 first, prepare and make available to the public a report that is similar to the report
21 required under par. (a), except that the report required under this paragraph shall
22 also include an independent certified audit of the project to determine if all financial
23 transactions were made in a legal manner and to determine if the environmental
24 remediation tax incremental district complied with this section. A copy of the report
25 shall be sent out to all taxing jurisdictions which received the reports under par. (a).

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1 **SECTION 20.** 66.1106 (10) (d) of the statutes is created to read:

2 66.1106 (10) (d) Not later than 180 days after an environmental remediation
3 tax incremental district terminates under sub. (11), provide the department with all
4 of the following on a form that is prescribed by the department:

5 1. A final accounting of project expenditures that are made for the
6 environmental remediation tax incremental district.

7 2. The final amount of eligible costs that have been paid for the environmental
8 remediation tax incremental district.

9 3. The total amount of environmental remediation tax increments that have
10 been paid to the political subdivision.

11 **SECTION 21.** 66.1106 (10) (e) of the statutes is created to read:

12 66.1106 (10) (e) If a political subdivision does not send to the department of
13 revenue the form specified in par. (d) within the time limit specified in par. (d), the
14 department may not certify the environmental remediation tax incremental base of
15 a district under sub. (4) until the form is sent to the department.

16 **SECTION 22.** 66.1106 (11) of the statutes is created to read:

17 66.1106 (11) **TERMINATION OF ENVIRONMENTAL REMEDIATION TAX INCREMENTAL**
18 **DISTRICTS.** An environmental remediation tax incremental district terminates when
19 the earliest of the following occurs:

20 (a) The political subdivision has received aggregate environmental
21 remediation tax increments with respect to the district in an amount equal to the
22 aggregate of all eligible costs.

23 (b) Twenty-three years after the department certifies the environmental
24 remediation tax incremental base of a parcel or contiguous parcels of property under
25 sub. (4).

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1 (c) The political subdivision's legislative body, by resolution, dissolves the
2 district. Upon dissolving the district, the political subdivision becomes liable for all
3 unpaid eligible costs actually incurred which are not paid from the separate fund
4 under sub. (9).

5 **SECTION 23.** 66.1106 (12) of the statutes is created to read:

6 66.1106 (12) (a) NOTICE OF DISTRICT TERMINATION. A political subdivision that
7 creates an environmental remediation tax incremental district under this section
8 shall give the department written notice within 10 days of the termination of the
9 environmental remediation tax incremental district under sub. (11).

10 (b) If the department receives a notice under par. (a) during the period from
11 January 1 to May 15, the effective date of the notice is the date the notice is received.
12 If the notice is received during the period from May 16 to December 31, the effective
13 date of the notice is the first January 1 after the department receives the notice.

14 **SECTION 24.** 66.1106 (13) (title) of the statutes is amended to read:

15 66.1106 (13) (title) PAYMENT OF ELIGIBLE COSTS FOR ANNEXED TERRITORY,
16 REDETERMINATION OF TAX INCREMENTAL BASE; FEES.

17 **SECTION 25.** 66.1106 (13) of the statutes is renumbered 66.1106 (13) (a) and
18 amended to read:

19 66.1106 (13) (a) If a city or village annexes territory from a town and if the town
20 is using an environmental remediation tax increment to remediate environmental
21 pollution on all or part of the territory that is annexed, the city or village shall pay
22 to the town that portion of the eligible costs that are attributable to the annexed
23 territory. The city or village, and the town, shall negotiate an agreement on the
24 amount that must be paid under this subsection. The department shall redetermine
25 the environmental remediation tax incremental base of any parcel of real property

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1 for which the environmental remediation tax incremental base was determined
2 under sub. (4) if part of that parcel is annexed under this subsection.

3 **SECTION 26.** 66.1106 (13) (b) of the statutes is created to read:

4 66.1106 (13) (b) The department may impose a fee of \$1,000 on a political
5 subdivision to determine or redetermine the environmental remediation tax
6 incremental base of an environmental remediation tax incremental district under
7 this subsection or sub. (4).

8 **SECTION 27.** 74.23 (1) (b) of the statutes is amended to read:

9 74.23 (1) (b) *General property taxes.* After making the distribution under par.
10 (a), the taxation district treasurer shall pay to each taxing jurisdiction within the
11 district its proportionate share of general property taxes, except that the treasurer
12 shall pay the state's proportionate share to the county. As part of that distribution,
13 the taxation district treasurer shall retain for the taxation district and for each tax
14 incremental district within the taxation district and each environmental
15 remediation tax incremental district created by the taxation district its
16 proportionate share of general property taxes. The taxation district treasurer shall
17 also distribute to the county the proportionate share of general property taxes for
18 each environmental remediation tax incremental district created by the county.

19 **SECTION 28.** 74.25 (1) (b) 1. of the statutes is amended to read:

20 74.25 (1) (b) 1. Pay in full to each taxing jurisdiction within the district all
21 personal property taxes included in the tax roll which have not previously been paid
22 to, or retained by, that taxing jurisdiction, except that the treasurer shall pay the
23 state's proportionate share to the county. As part of that distribution, the taxation
24 district treasurer shall allocate to each tax incremental district within the taxation
25 district and each environmental remediation tax incremental district created by the

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1 taxation district its proportionate share of personal property taxes. The taxation
2 district treasurer shall also distribute to the county the proportionate share of
3 personal property taxes for each environmental remediation tax incremental district
4 created by the county.

5 **SECTION 29.** 74.25 (1) (b) 2. of the statutes is amended to read:

6 74.25 (1) (b) 2. Pay to each taxing jurisdiction within the district its
7 proportionate share of real property taxes, except that the treasurer shall pay the
8 state's proportionate share to the county. As part of that distribution, the taxation
9 district treasurer shall retain for the taxation district and for each tax incremental
10 district within the taxation district and each environmental remediation tax
11 incremental district created by the taxation district its proportionate share of real
12 property taxes. The taxation district treasurer shall also distribute to the county the
13 proportionate share of real property taxes for each environmental remediation tax
14 incremental district created by the county.

15 **SECTION 30.** 74.30 (1) (i) of the statutes is amended to read:

16 74.30 (1) (i) Pay in full to each taxing jurisdiction within the district all
17 personal property taxes included in the tax roll which have not previously been paid
18 to, or retained by, each taxing jurisdiction, except that the treasurer shall pay the
19 state's proportionate share to the county. As part of that distribution, the taxation
20 district treasurer shall allocate to each tax incremental district within the taxation
21 district and each environmental remediation tax incremental district created by the
22 taxation district its proportionate share of personal property taxes. The taxation
23 district treasurer shall also distribute to the county the proportionate share of
24 personal property taxes for each environmental remediation tax incremental district
25 created by the county.

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1 **SECTION 31.** 74.30 (1) (j) of the statutes is amended to read:

2 74.30 (1) (j) Pay to each taxing jurisdiction within the district its proportionate
3 share of real property taxes, except that the treasurer shall pay the state's
4 proportionate share to the county. As part of that distribution, the taxation district
5 treasurer shall retain for the taxation district and for each tax incremental district
6 within the taxation district and each environmental remediation tax incremental
7 district created by the taxation district its proportionate share of real property taxes.
8 The taxation district treasurer shall also distribute to the county the proportionate
9 share of real property taxes for each environmental remediation tax incremental
10 district created by the county.

11 **SECTION 32.** 74.30 (2) (b) of the statutes is amended to read:

12 74.30 (2) (b) Pay to each taxing jurisdiction within the district its proportionate
13 share of real property taxes collected, except that the taxation district treasurer shall
14 pay the state's proportionate share to the county, and the county treasurer shall
15 settle for that share under s. 74.29. As part of that distribution, the taxation district
16 treasurer shall retain for the taxation district and for each tax incremental district
17 within the taxation district and each environmental remediation tax incremental
18 district created by the taxation district its proportionate share of real property taxes.
19 The taxation district treasurer shall also distribute to the county the proportionate
20 share of real property taxes for each environmental remediation tax incremental
21 district created by the county.

22 **SECTION 33.** 79.095 (1) (c) of the statutes is amended to read:

23 79.095 (1) (c) "Taxing jurisdiction" means a municipality, county, school
24 district, special purpose district, tax incremental district, environmental
25 remediation tax incremental district, or technical college district.

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1 **SECTION 34.** 79.095 (2) (b) of the statutes is amended to read:

2 79.095 (2) (b) On or before December 31, the tax rate used for each tax
3 incremental district for which the municipality assesses property and for each
4 environmental remediation tax incremental district for which the municipality
5 assesses property.

6 **SECTION 35.** 227.01 (13) (zc) of the statutes is amended to read:

7 227.01 (13) (zc) Establishes ~~an inventory or a hazard ranking a~~ database under
8 s. 292.31.

9 **SECTION 36.** 234.01 (4n) (a) 3m. a. of the statutes is amended to read:

10 234.01 (4n) (a) 3m. a. The facility is in a tax incremental district or an
11 environmental remediation tax incremental district or is the subject of an urban
12 development action grant and will result in a net economic benefit to the state.

13 **SECTION 37.** 292.12 of the statutes is created to read:

14 **292.12 Sites with residual contamination. (1) DEFINITIONS.** In this section:

15 (a) “Agency with administrative authority” means the department of
16 agriculture, trade and consumer protection with respect to a site over which it has
17 jurisdiction under s. 94.73 (2), the department of commerce with respect to a site over
18 which it has jurisdiction under s. 101.144 (2) (a), or the department of natural
19 resources with respect to a site over which it has jurisdiction under s. 292.11 (7).

20 (b) “Case closure” means a determination by the agency with administrative
21 authority, based on information available at the time of the review by the agency with
22 administrative authority, that no further remedial action is necessary at a site.

23 (c) “Engineering control” means an action designed and implemented to
24 contain contamination or to minimize the spread of contamination, including a cap
25 or soil cover.

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1 (d) "Remedial action" means action that is taken in response to a discharge of
2 a hazardous substance and that is necessary to restore the environment to the extent
3 practicable and to minimize the harmful effects of the discharge to the air, lands, and
4 waters of this state.

5 (e) "Site" means a waste site or any area where a hazardous substance has been
6 discharged.

7 **(2) AGENCY AUTHORITY.** The agency with administrative authority may do any
8 of the following as a condition of approving remedial action or of issuing a case closure
9 letter if residual contamination remains on a site after the conclusion of remedial
10 action at the site:

11 (a) Require maintenance of an engineering control on the site.

12 (b) Require an investigation of the extent of residual contamination and the
13 performance of any necessary remedial action if a building or other structural
14 impediment is removed that had prevented a complete investigation or remedial
15 action at the site.

16 (c) Impose limitations or other conditions related to property, in accordance
17 with rules promulgated by the department, to ensure that conditions at the site
18 remain protective of public health, safety, and welfare and the environment, and, as
19 applicable, to promote economic development.

20 **(3) DATABASE.** (a) The department shall maintain a database listing sites for
21 which remedial action has been approved or a case closure letter has been issued and
22 that have residual contamination and listing sites for which the department has
23 directed that action be taken under s. 292.11 (9) (e) 4. The department shall make
24 the database available to the public. The department shall include any
25 requirements, limitations, or conditions imposed under sub. (2) (a) to (c) in the

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1 database, subject to modification under sub. (6), and shall include any action that the
2 department has directed to be taken under s. 292.11 (9) (e) 4.

3 (b) 1. If residual contamination remains on a site after the conclusion of
4 remedial action at the site, the agency with administrative authority shall request
5 the department to list the site, and any requirements, limitations, or conditions
6 imposed under sub. (2) (a) to (c), in the database maintained by the department
7 under par. (a) and, as a condition of approving remedial action or of issuing a case
8 closure letter, shall require the person requesting approval of remedial action or case
9 closure to provide the information necessary for the listing and to pay a fee
10 established by the department for the listing.

11 2. If the department has directed that a local governmental unit or economic
12 development corporation take action under s. 292.11 (9) (e) 4. for a site, the
13 department shall list the site, and the action that the department has directed, in the
14 database maintained by the department under par. (a) and require the local
15 governmental unit or the corporation to pay a fee established by the department for
16 the listing.

17 (4) NOTIFICATION OF RESIDUAL CONTAMINATION. Before a person applies for case
18 closure for a site that includes any property that has residual contamination and is
19 not owned by the person, the person shall provide written notification of the residual
20 contamination to the owner of that property. The person shall include in the notice,
21 at a minimum, a description of the type of residual contamination and the location
22 and description of any engineering control on the site.

23 (5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS. (a) A person who owns
24 property, including a property or site that is listed under sub. (3) (b), shall comply
25 with requirements described in sub. (2) (a) or (b) that are imposed by an agency with

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1 administrative authority without regard to when the person obtained the property,
2 unless another person has a legally enforceable responsibility to comply with the
3 requirements.

4 (b) A person who owns or occupies property, including a property or site that
5 is listed under sub. (3) (b), shall comply with limitations or conditions described in
6 sub. (2) (c) that are imposed by an agency with administrative authority without
7 regard to when the person obtained or occupied the property.

8 **(6) MODIFICATION OF REQUIREMENTS.** A person may request the agency with
9 administrative authority over a site to change or eliminate a requirement,
10 limitation, or condition that it imposed under sub. (2) (a) to (c) with respect to a site.
11 If the agency with administrative authority agrees to change or eliminate a
12 requirement, limitation, or condition imposed under sub. (2) (a) to (c), it shall provide
13 written approval to the person, shall request the department to change the listing
14 under sub. (3) (b) for the site accordingly, and shall require the person to pay a fee
15 established by the department for changing the listing.

16 **SECTION 38.** 292.15 (2) (ae) 7. of the statutes is created to read:

17 292.15 (2) (ae) 7. If the voluntary party owns or controls the property, the
18 voluntary party allows the department, any authorized representative of the
19 department, a representative of a company that has issued insurance required under
20 subd. 3m., any party that possessed or controlled the hazardous substance or caused
21 the discharge of the hazardous substance, and any consultant or contractor of any
22 of those persons to enter the property to determine whether natural attenuation has
23 failed and to take action to respond to the discharge if natural attenuation has failed.

24 **SECTION 39.** 292.15 (2) (at) of the statutes is repealed.

25 **SECTION 40.** 292.15 (2) (b) 5. of the statutes is created to read:

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1 292.15 (2) (b) 5. If the voluntary party does not own or control the property, the
2 person who owns or controls the property fails to allow the department, any
3 authorized representative of the department, any representative of a company that
4 has issued insurance required under par. (ae) 3m., any party that possessed or
5 controlled the hazardous substance or caused the discharge of the hazardous
6 substance, or any consultant or contractor of any of those persons to enter the
7 property to determine whether natural attenuation has failed and to take action to
8 respond to the discharge if natural attenuation has failed.

9 **SECTION 41.** 292.15 (2) (c) of the statutes is amended to read:

10 292.15 (2) (c) *Prohibition on action.* The department of justice may not
11 commence an action under 42 USC 9607 against any voluntary party meeting the
12 criteria of this subsection to recover costs for which the voluntary party is exempt
13 under pars. (a), (ae), (ag), (am), ~~(at)~~ and (b).

14 **SECTION 42.** 292.15 (2) (d) of the statutes is repealed.

15 **SECTION 43.** 292.15 (2) (e) of the statutes is amended to read:

16 292.15 (2) (e) *Contract with insurer.* If the department requires insurance
17 under par. (ae) 3m. ~~or (at) 3.~~, the department may contract with an insurer to provide
18 insurance required under par. (ae) 3m. ~~or (at) 3.~~ and may require voluntary parties
19 to obtain coverage under the contract.

20 **SECTION 44.** 292.15 (3) of the statutes is amended to read:

21 292.15 (3) **SUCCESSORS AND ASSIGNS.** An exemption provided in sub. (2) applies
22 to any successor or assignee of the voluntary party if the successor or assignee
23 complies with the provisions of sub. (2) (a) 4. and 5. or (ae) 3m., 4. ~~and~~, 5., and 7. and,
24 if applicable, sub. (2) (ag) 4. or (am) as though the successor or assignee were the
25 voluntary party except that the exemption in sub. (2) does not apply if the successor

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1 or assignee knows that a certificate under sub. (2) (a) 3., (ae) 3., (ag) 2. or (am) was
2 obtained by any of the means or under any of the circumstances specified in sub. (2)
3 (a) 6.

4 **SECTION 45.** 292.15 (6) (a) of the statutes is renumbered 292.15 (6).

5 **SECTION 46.** 292.15 (6) (b) of the statutes is repealed.

6 **SECTION 47.** 292.15 (7) (d) of the statutes is created to read:

7 292.15 (7) (d) A solid waste facility that was licensed under s. 289.30 or s.
8 144.44, 1993 stats.

9 **SECTION 48.** 292.15 (7) (e) of the statutes is created to read:

10 292.15 (7) (e) A solid waste facility or waste site at which active remedial
11 operation or treatment is required, including a site or facility where methane or
12 groundwater monitoring or gas, leachate, or groundwater collection or treatment is
13 required.

14 **SECTION 49.** 292.21 (1) (c) 2. g. of the statutes is amended to read:

15 292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of
16 the written compilations of sites or facilities considered to pose a threat to human
17 health or the environment, including the national priorities list under 42 USC 9605
18 (a) (8) (B); the federal environmental protection agency's information system for the
19 comprehensive environmental response, compensation and liability act, 42 USC
20 9601 to 9675, (CERCLIS); and the department's most recent Wisconsin remedial
21 response site evaluation report, including the inventory database of sites or facilities
22 which may cause or threaten to cause environmental pollution and other properties
23 that are environmentally contaminated required by s. 292.31 (1) (a); ~~and the~~
24 department's registry of abandoned landfills.

25 **SECTION 50.** 292.23 of the statutes is created to read:

ASSEMBLY BILL 999**1 292.23 Responsibility of local governmental units; solid waste. (1)**

2 DEFINITION. In this section:

3 (a) "Local governmental unit" means a municipality, a redevelopment
4 authority created under s. 66.1333, a public body designated by a municipality under
5 s. 66.1337 (4), a community development authority, or a housing authority.

6 (b) "Solid waste facility" has the meaning given in s. 289.01 (35).

7 (c) "Waste site" has the meaning given in s. 289.01 (41).

8 **(2) EXEMPTION FROM LIABILITY.** Except as provided in sub. (3), a local
9 governmental unit is exempt from s. 289.05, and rules promulgated under that
10 section, with respect to property acquired by the local governmental unit before, on,
11 or after the effective date of this subsection [revisor inserts date], if any of the
12 following applies:

13 (a) The local governmental unit acquired the property through tax delinquency
14 proceedings or as the result of an order by a bankruptcy court.

15 (b) The local governmental unit acquired the property from a local
16 governmental unit that is exempt under this subsection with respect to the property.

17 (c) The local governmental unit acquired the property through a condemnation
18 or other proceeding under ch. 32.

19 (d) The local governmental unit acquired the property for the purpose of slum
20 clearance or blight elimination.

21 (e) The local governmental unit acquired the property through escheat.

22 (f) The local governmental unit acquired the property using funds appropriated
23 under s. 20.866 (2) (ta) or (tz).

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1 **(3) EXCEPTIONS.** (a) Subsection (2) does not apply with respect to
2 environmental pollution or a discharge of a hazardous substance caused by any of
3 the following:

4 1. An action taken by the local governmental unit.

5 2. A failure of the local governmental unit to take appropriate action to restrict
6 access to the property in order to minimize costs or damages that may result from
7 unauthorized persons entering the property.

8 3. A failure of the local governmental unit to sample and analyze unidentified
9 substances in containers stored aboveground on the property.

10 4. A failure of the local governmental unit to remove and properly dispose of,
11 or to place in a different container and properly store, any hazardous substance
12 stored aboveground on the property in a container that is leaking or is likely to leak.

13 (b) Subsection (2) does not apply if, after considering the intended development
14 and use of the property, the department determines that action is necessary to reduce
15 to acceptable levels any substantial threat to public health or safety when the
16 property is developed or put to that intended use, the department directs the local
17 governmental unit to take that necessary action, and the local governmental unit
18 does not take that action as directed.

19 (c) Subsection (2) only applies if the local governmental unit agrees to allow the
20 department, any authorized representatives of the department, any party that
21 possessed or controlled a hazardous substance that was discharged or that caused
22 environmental pollution or the discharge of a hazardous substance, and any
23 consultant or contractor of such a party to enter the property to take action to respond
24 to the environmental pollution or discharge.

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1 (d) Subsection (2) does not apply to property described in sub. (2) (f) unless the
2 local governmental unit enters into an agreement with the department to ensure
3 that the conditions in pars. (a) and (b) are satisfied.

4 (e) Subsection (2) does not apply to any solid waste facility or waste site that
5 was operated by the local governmental unit or was owned by the local governmental
6 unit while it was operated.

7 (f) Subsection (2) does not apply to a solid waste facility that was licensed under
8 s. 289.30 or s. 144.44, 1993 stats.

9 (g) Subsection (2) does not apply to property at which the local governmental
10 unit disposed of waste that caused environmental pollution or a discharge of a
11 hazardous substance at the property.

12 (h) Subsection (2) does not apply to waste generated on the property by the local
13 governmental unit, its agents, or its contractors.

14 (i) Subsection (2) does not apply if the local governmental unit undertakes or
15 authorizes construction on the property without the approval of the department or
16 if the local government unit undertakes an activity that interferes with a closed solid
17 waste facility or waste site and that causes a threat to public health, safety, or
18 welfare.

19 (j) Subsection (2) only applies to property with respect to which, before the local
20 governmental unit acquired the property, the department imposed requirements
21 related to health or safety for the maintenance of an active leachate or methane
22 collection system, of a cap over waste on the property, or of a groundwater or gas
23 monitoring system if the local governmental unit complies with those requirements.

24 (k) Subsection (2) does not exempt a local governmental unit from land use
25 restrictions required by the department, including those that are necessary to

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1 prevent damage to a cap over waste on the property or to otherwise prevent uses of
2 the property that may cause a threat to public health or safety.

3 **SECTION 51.** 292.31 (1) (title) of the statutes is amended to read:

4 292.31 (1) (title) ~~INVENTORY DATABASE; ANALYSIS; HAZARD RANKING.~~

5 **SECTION 52.** 292.31 (1) (a) (title) of the statutes is repealed and recreated to
6 read:

7 292.31 (1) (a) (title) *Database.*

8 **SECTION 53.** 292.31 (1) (a) 1. of the statutes is repealed and recreated to read:

9 292.31 (1) (a) 1. The department shall compile, maintain, and make available
10 to the public a database of all sites or facilities and other properties at which the
11 discharge of a hazardous substance or other environmental pollution has been
12 reported to the department. The department shall update the database regularly.

13 **SECTION 54.** 292.31 (1) (a) 2. of the statutes is repealed.

14 **SECTION 55.** 292.31 (1) (a) 3. of the statutes is amended to read:

15 292.31 (1) (a) 3. The decision of the department to include a site or facility or
16 other property on the inventory database under subd. 1. or exclude a site or facility
17 or other property from the inventory database is not subject to judicial review.

18 **SECTION 56.** 292.31 (1) (a) 4. of the statutes is amended to read:

19 292.31 (1) (a) 4. Notwithstanding s. 227.01 (13) or 227.10 (1), the ~~list of sites~~
20 ~~or facilities which results from the inventory database under subd. 1.~~ is not a rule.

21 **SECTION 57.** 292.31 (1) (b) 1. of the statutes is amended to read:

22 292.31 (1) (b) 1. The department may take direct action under subd. 2. or 3. or
23 may enter into a contract with any person to take the action. ~~The department may~~
24 ~~take action under subd. 2. or 3. regardless of whether a site or facility is included on~~
25 ~~the inventory under par. (a) or the hazard ranking list under par. (c).~~

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1 **SECTION 58.** 292.31 (1) (c) of the statutes is repealed.

2 **SECTION 59.** 292.31 (2) (intro.) of the statutes is amended to read:

3 292.31 **(2)** ENVIRONMENTAL RESPONSE PLAN RULES. (intro.) The department shall
4 promulgate ~~by rule a waste facility environmental response plan.~~ The plan shall
5 contain rules relating to investigation and remedial action for sites or facilities and
6 other properties at which the air, land, or waters of the state have been affected by
7 the discharge of a hazardous substance or other environmental pollution, including
8 all of the following provisions:

9 **SECTION 60.** 292.31 (2) (a) of the statutes is amended to read:

10 292.31 **(2)** (a) Methods for ~~preparing the inventory and conducting the analysis~~
11 ~~under sub. (1)~~ investigating the degree and extent of contamination for actions under
12 sub. (3).

13 **SECTION 61.** 292.31 (3) (c) of the statutes is amended to read:

14 292.31 **(3)** (c) *Sequence of remedial action.* In determining the sequence for
15 taking remedial action under this subsection, the department shall consider the
16 ~~hazard ranking~~ significance to public health, the community, and the environment
17 of each site or facility, the amount of funds available, the information available about
18 each site or facility, the willingness and ability of an owner, operator, or other
19 responsible person to undertake or assist in remedial action, the availability of
20 federal funds under 42 USC 9601, et seq., and other relevant factors. The
21 department shall give the highest priority to remedial action at sites or facilities
22 which have caused contamination of a municipal water system ~~in a town with a~~
23 ~~population greater than 10,000.~~ If any such site or facility is eligible for federal funds
24 ~~under 42 USC s. 9601 to 9675, but the federal funds will not be available before~~

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1 January 1, 2000, the department shall proceed with remedial action using state
2 funds.

3 **SECTION 62.** 292.31 (3) (cm) of the statutes is repealed.

4 **SECTION 63.** 292.31 (3) (d) of the statutes is amended to read:

5 292.31 (3) (d) *Emergency responses.* Notwithstanding rules promulgated
6 under this section, ~~the hazard ranking list, or~~ the considerations for taking action
7 under par. (c) ~~or the remedial action schedule under par. (cm)~~, the department may
8 take emergency action under this subsection and subs. (1) and (7) at a site or facility
9 if delay will result in imminent risk to public health or safety or the environment.
10 The department is not required to hold a hearing under par. (f) if emergency action
11 is taken under this paragraph. The decision of the department to take emergency
12 action is a final decision of the agency subject to judicial review under ch. 227.

13 **SECTION 64.** 292.31 (4) of the statutes is amended to read:

14 292.31 (4) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY
15 MUNICIPALITIES. Notwithstanding ~~the inventory, analysis and hazard ranking under~~
16 ~~sub. (1)~~, the environmental response plan prepared rules under sub. (2) or the
17 environmental repair authority, remedial action sequence and emergency response
18 requirements under sub. (3), the department shall pay that portion of the cost of any
19 monitoring requirement which is to be paid under s. 289.31 (7) (f) from the
20 appropriation under s. 20.370 (2) (dv) prior to making other payments from that
21 appropriation.

22 **SECTION 65.** 292.31 (5) of the statutes is repealed.

23 **SECTION 66.** 292.57 (title) of the statutes is amended to read:

24 **292.57 (title) Database of properties on which groundwater standards**
25 **are exceeded with residual contamination.**

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1 **SECTION 67.** 292.57 (2) (a) of the statutes is amended to read:

2 292.57 **(2)** (a) The department may promulgate a rule specifying a fee for
3 placing information into a database concerning a property on which a groundwater
4 standard is exceeded ~~into a database~~, a property on which residual contamination
5 is present in soil, or a property that is subject to s. 292.12 (3) (b). The department
6 may also specify a fee for modifying information in the database.

7 **SECTION 68. Initial applicability.**

8 (1) The treatment of sections 66.1106 (1) (c), (e), (f), (fm), (g), (i), (je), and (k),
9 (1m), (2) (a), (4) (intro.) and (b), (7) (a) and (d) 1., (9), (10) (title), (a), (b), (c), (d), and
10 (e), (11), (12), and (13) (title), 74.23 (1) (b), 74.25 (1) (b) 1. and 2., 74.30 (1) (i) and (j)
11 and (2) (b), 79.095 (1) (c) and (2) (b), and 234.01 (4n) (a) 3m. a. of the statutes, the
12 renumbering and amendment of section 66.1106 (13) of the statutes, and the creation
13 of section 66.1106 (13) (b) of the statutes first apply to an environmental remediation
14 tax incremental district that is in existence on October 1, 2006, or that is created on
15 October 1, 2006.

16 **SECTION 69. Effective dates.** This act takes effect on the day after publication,
17 except as follows:

18 (1) The treatment sections 66.1106 (1) (c), (e), (f), (fm), (g), (i), (je), and (k), (1m),
19 (2) (a), (4) (intro.) and (b), (7) (a) and (d) 1., (9), (10) (title), (a), (b), (c), (d), and (e), (11),
20 (12), and (13) (title), 74.23 (1) (b), 74.25 (1) (b) 1. and 2., 74.30 (1) (i) and (j) and (2)
21 (b), 79.095 (1) (c) and (2) (b), and 234.01 (4n) (a) 3m. a. of the statutes, the
22 renumbering and amendment of section 66.1106 (13) of the statutes, and the creation
23 of section 66.1106 (13) (b) of the statutes takes effect on October 1, 2006.

24

(END)